

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 22, 2008 has been entered.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ellen Plotkin on February 23, 2009.

The application has been amended as follows:

Please cancel claims 9, 20, and 21.

Please amend claim 19 as follows. On line 15, after the phrase "wherein at least 60% by weight of the particulates" please change the word "has" to "have".

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Applicant's arguments filed December 22, 2008 are convincing. Specifically, Cain et al (US 5718938), the closest prior art and the base reference for the previous 103 rejections does not teach a creamer, whitener, or non-dairy cream alternative, a particulate composition, a particulate size, a triglyceride composition matrixed with a protein or the particulates as partially covered or encapsulated by about 20-80% as recited in independent claim 19. As Cain teaches of dough composition there is no motivation or suggestion to one of ordinary skill in the art to combine the teachings of

Cain to obtain a creamer whitener, or nondairy creamer alternative comprising a partially encapsulated fat and protein matrix as instantly claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Kelly Bekker/
Examiner
Art Unit 1794